ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several states is concerned.

This conclusion disposes of the cases now under consideration. In the cases of the *United States* v. *Michael Ryan*, and of *Richard A. Robinson and Wife* against *The Memphis and Charleston Railroad Co.*, the judgments must be affirmed. In the other cases, the answer to be given will be that the first and second sections of the Act of Congress of March 1st 1875, entitled, "An act to protect all citizens in their civil and legal rights" are unconstitutional and void, and that judgment should be rendered upon the several indictments in those cases accordingly. And it is so ordered.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

COURT OF ERRORS AND APPEALS OF MARYLAND.[2]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[3]

SUPREME COURT OF VERMONT.[4]

ACTION. See *Attachment.*

ADMIRALTY. See *Attachment.*

ARBITRATION.

Partnership Settlement by Accountant—Opening of Settlement.—Where partners sought and obtained the aid of an accountant in adjusting their accounts, for the purpose of a settlement, and he prepared a paper showing what he considered a fair settlement between them, which they adopted: *Held*, that this was no arbitration, and the paper prepared by the accountant was no award, it merely constituting a settlement, liable to be opened for mistake: *Stage* v. *Gorich*, 107 Ill.

Where it is clearly shown that one partner has made advances for the use of the firm, of considerable sums, which were not taken into consideration at a settlement had between the partners, on bill filed by one of the partners for an account, it was *held*, the cause should have been referred to the master to state anew the accounts, so far as concerned the omitted items: *Id.*

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[1] From Hon. Norman L. Freeman, Reporter, to appear in 107 Ill. Rep.

[2] From J. Schaaf Stockett, Esq., Reporter; to appear in 60 Md. Reports.

[3] From John Lathrop, Esq., Reporter; to appear in 134 Mass. Rep.

[4] From Edwin T. Palmer, Reporter, to appear in 55 Vt. Rep.

Attachment.

Replevin for Goods attached—Assumpsit against Officer for Money held under Attachment.—The mortgagee of goods attached, while in the possession of the mortgagor, by an invalid attachment, may maintain replevin against the attaching officer: *Allen* v. *Wright*, 134 Mass.

Money held under an invalid attachment may be recovered of the attaching officer in an action for money had and received: *Id.*

Seamens' Wages.—The wages of a seaman on a coasting voyage on the Atlantic coast are subject to attachment by the trustee process: *White* v. *Dunn*, 134 Mass.

Bills and Notes.

When not Negotiable—Stipulation for Interest—Parol Evidence to vary—Estoppel.—In an action upon a non-negotiable promissory note, signed by the defendant and payable to a third person or bearer, the plaintiff offered to show that when the defendant gave him the note, he told the defendant it should be in his name or to his order, and that the defendant replied, "It is all right, it makes no difference, it is payable to bearer and you can collect." *Held*, that the evidence was inadmissible to vary the legal effect of the instrument; and that it could not operate as an estoppel to prevent the defendant from contending that the plaintiff could not maintain an action on the instrument in his own name: *Whitwell* v. *Winslow*, 134 Mass.

A promissory note for a certain amount, payable to a person named or bearer "with interest the same as savings banks pay," is not negotiable: *Id.*

Transfer after Maturity—Defences—Set-off.—The maker of a note, transferred after it is due, sued in the name of the transferree, cannot *plead in offset* a matter which existed between him and the payee at the time of the transfer, although he can *payment* or any defence which grew out of the note transaction: *Armstrong* v. *Noble*, 55 Vt.

Bond.

Good as a Common-Law Obligation, though not in compliance with the Statute.—An obligation entered into voluntarily, and for a sufficient consideration, unless it contravenes the policy of the law, or is repugnant to some provision of the statute, is valid at common law, notwithstanding the attempt may have been to execute it pursuant to a statute with the terms of which it does not strictly comply: *Barnes* v. *Brookman*, 107 Ill.

Common Carrier.

Surrender of Goods under Attachment—Trover by Consignor.—A common carrier is not liable in trover to the consignor, for surrendering the possession of goods, entrusted to him for carriage, to an officer, who attaches them upon legal process against the consignee: *French* v. *Star Union Trans. Co.*, 134 Mass.

A common carrier, who surrenders the possession of goods entrusted to him for carriage, to an officer, who attaches them upon legal process against the consignee, is not liable to an action by the consignor, after

notice by him to hold the goods, for not notifying the officer or taking steps to stop the goods *in transitu: Id.*

CONSTITUTIONAL LAW.

State Constitution—Effect of.—A state constitution is a limitation upon the powers of the legislature, and the legislature possesses every power not delegated to some other department, or expressly denied to it by the constitution: *Winch* v. *Tobin*, 107 Ill.

Right of Trial by Jury—Authority to Court of Equity to hear Bills to quiet Title—The act providing that a court of chancery may hear and determine bills to quiet title, and to remove clouds from the title of real estate where the lands are unimproved and unoccupied, is not in violation of the constitutional guaranty of trial by jury, as courts of chancery may submit issues of fact to trial by jury. If such right should be refused by the court, the denial thereof would come from the court, and not from the law: *Gage* v. *Ewing*, 107 Ill.

Where jurisdiction is bestowed by statute upon a court of chancery in a case where there existed before the adoption of the constitution a remedy at law, under which was given the right of trial by jury, it is presumed such a trial would be allowed, if asked, on a trial in chancery, and obedience paid to the constitutional provision giving such right: *Id.*

CONTRACT.

Assuming the Debts of Another—Consideration.—Where a corporation is formed, and purchases the business and assets of a firm, the members of which compose the corporation in part, which business is conducted as before the dissolution of the partnership, and the corporation, as a part of the consideration of the property and assets of the firm, assumes its debts and liabilities, the promise to pay such debts is founded on a sufficient consideration, and a creditor of the firm may maintain an action for his debt against such corporation, especially when it still continues him in the same employment out of which the debt has arisen: *The Shober and Carqueville Lithographing Co.* v. *Kerting*, 107 Ill.

Consideration—Compromise of Doubtful Right.—The plaintiff was heir-at-law of the defendant's testator, but received nothing under the will. The defendant was executor, and his wife and daughter legatees. The plaintiff claimed that he had determined to contest the will on the ground that it had been obtained by undue influence, that he had given notice of his intention to the Probate Court, that he had employed counsel, and had been advised by him to make opposition; that this was known to the defendant; that the defendant promised to pay the plaintiff $5000 if he would desist in such opposition; that the plaintiff in consideration of such promise, did forbear; and that the will was proved without delay. *Held*, in an action to recover the $5000, 1. The plaintiff was neither bound to allege nor prove that undue influence had been used to procure the making of the will. 2. But the consideration was sufficient if he was able to show that he honestly thought he *had good and reasonable ground* for making the claim that the will, so far as it related to him, was the production of undue influence, and for that reason he *honestly and in good faith intended* to oppose its establishment.

3. A doubtful right compromised, to be a good consideration for a promise, must, upon reasonable grounds, be honestly entertained. There must be a yielding of something by each party: *Bellows* v. *Sowles*, 55 Vt.

Nudum pactum—Promise by Town to pay invalid Claim.—In an action of assumpsit based on a vote of the town, where the plaintiff offered to prove that he was injured while travelling on the highway through its insufficiency; that he gave notice of his injuries, in proper form, within *thirty* days, instead of *twenty;* that he was misled respecting the time within which such notice should be given by information given him, on which he relied, by *one* of the selectmen of the town; that at a legally warned meeting of the voters of the town the plaintiff presented his claim for damages, insisting that the defendant could not take advantage of the defect in the notice, and that thereupon the town voted to pay him $200; which offer of evidence was rejected by the court below, and a verdict ordered for the defendant: *Held*, that defendant was not responsible for the misinformation given by *one* of its selectmen; that the vote was not a compromise, as there was no mutual yielding of opposing claims; and no consideration for the vote: *Gregg* v. *Town of Weathersfield*, 55 Vt.

Breach—Damages—Recoupment—Set-off.—The contract was made by letters. The defendant supposed he had ordered a cider-press with counter-shaft attachment; but when it came he found it was a press with power attachment with chain-belt. He knew what he had received and that the price was $28 more than that of the other. It being late in the season, and his customers pressing him to do their work, the defendant set up and used the press. The plaintiff, supposing the order to call for the machine which he had sent, gave wrong directions as to the timbers needed in setting it up, and injury resulted in consequence to the defendant. The defendant wrote asking the plaintiff if he could ship the press "at once": and the plaintiff replied that he could, "on short notice." In a few days thereafter, September 4, 1880, the defendant ordered it to be shipped "immediately." September 13th, he wrote again, saying that he had heard nothing from his order; and September 15th the plaintiff replied that the press would be shipped "that day or the next." It was not shipped so as to be received until September 30th, 1880. In an action of assumpsit to recover the price: *Held*, 1. That by setting up and using the press the defendant accepted it. 2. That all the facts show that both parties contemplated an immediate fulfilment of the order to ship the press. 3. That the plaintiff is liable for all damages resulting directly and naturally from his delay in performing the contract, and for his erroneous directions as to using the timbers in setting up the press, and, hence is liable for loss incurred in changing the timbers, loss of time of workmen, and loss on the stock; but not for loss of *custom*, it being too indirect and remote: *Dennis* v. *Stoughton*, 55 Vt.

Criminal Law.

Proving an Alibi—Finding Stolen Property in possession of the Accused.—It is well settled that the *onus* of proving an alibi in a criminal case devolves upon the accused, and it must be clearly and satisfactorily established before it can avail, where the evidence otherwise makes out

a clear case against him. This defence cannot be made out in a case where the evidence to show the same is, in many important particulars, conflicting or unreliable: *Garrity* v. *The People*, 107 Ill.

Where a burglary has been committed, and money and other property taken, it is not indispensable to the conviction of one accused of the crime to trace the fruits of the crime to his possession. Convictions of this kind are frequently sustained without such evidence, especially when the criminating evidence is strong: *Id.*

DEBTOR AND CREDITOR.

Gift—Possession.—The law only requires the donee to take such possession as the nature of the property admits of in order to protect it against attachment by the creditors of the donor; thus, a father having purchased a piano for his daughter, moved it into his house, and, some two months afterwards, on her attaining her majority, made her a birthday party, and in a formal and public manner, in the presence of all the guests, gave it to her. After this the daughter used the piano as her own, and all the family treated it as hers, except it was stored in the father's house, and by his consent was attached, without her knowledge. After her marriage she lived at her father's house some, and away some, but the piano was left where it had been, as she had no place to put it: *Held*, that the title to the property passed, and it was not attachable by the creditors of the donor: *Ross* v. *Draper*, 55 Vt.

DEED.

Delivery—Revocation.—If a person executes a deed of land, and places it in the hands of A. with directions to keep it during the grantor's life and on his death to deliver it to the grantee, A. holds it as agent of the grantor, and not as agent of the grantee, and the grantor may revoke it at any time: *Hale* v. *Joslin*, 134 Mass.

EQUITY. See *Constitutional Law; Taxes.*

Adverse Holding by Defendant and Laches by Plaintiff.—Where there is an assertion of title by the complainants, and a positive and distinct denial of such title by the defendants, the tenants in possession, together with an exclusive reception of the profits for a long period, and other acts indicating an adverse holding by the tenants in possession, and knowledge of such adverse holding, and laches on the part of the complainants, relief cannot be afforded by a court of equity A court of law is the proper forum for the determination of the controversy: *Cowman* v. *Colquhoun*, 60 Md.,

ERRORS AND APPEALS. See *Removal of Causes.*

EVIDENCE.

Extracts from Books on Mechanics.—In an action on the case to recover for an injury caused by the use of defective machinery, there is no error in refusing to allow the party to read to the jury certain extracts from a standard work on mechanics: *North Chicago Rolling Mills* v. *Monka*, 107 Ill.

FORMER RECOVERY.

Judgment for Instalments.—Where in an action on a bond with a

penalty, conditioned for the payment of a specified sum in five annual instalments, with interest, a judgment is confessed for the amount of the first four instalments then due, with interest to a certain day, such judgment constitutes no bar to another action on the bond for the subsequent breach, which consisted in the failure to pay the last instalment with interest: *Ahl* v. *Ahl*, 60 Md.

FRAUD.

Negligence of Party Defrauded.—While the law requires of all persons the exercise of reasonable prudence in the business of life, and does not permit one to rest indifferent in reliance upon the interested representations of an adverse party, still there is a certain limit to this rule, and as between the original parties, when it appears that one has been guilty of an intentional and deliberate fraud, by which to his knowledge the other has been misled and influenced in his action, he cannot escape the legal consequences of his fraudulent conduct by saying that the fraud might have been discovered had the party whom he deceived exercised reasonable care and diligence: *Linington* v. *Strong*, 107 Ill.

GIFT.

What Constitutes—Loan—Limitation, Statute of.—Where bonds are delivered by one person to another under an express promise, made in writing, by the latter to return the same "whenever called for," the promise is a written contract, the terms and conditions of which cannot lawfully be varied or modified by parol proof, and such undertaking is entirely incompatible with the idea of an absolute gift: *Selleck* v. *Selleck*, 107 Ill.

Where a party delivers bonds to another under a written acknowledgment, from which it is evident the party making the delivery intends to retain his right to call for them if circumstances should make that course desirable, the transaction cannot be regarded as an absolute gift, even though he never expected to call for them. In such case it matters not what may have been his motives for such action: *Id.*

If bonds are delivered by one person to another under a written contract to return the same "whenever called for," no duty to return the bonds or their proceeds will arise until an actual demand for the same is made, and no right of action will accrue to the lender until after such demand is made, and the Statute of Limitations will not commence to run until the cause of action accrues: *Id.*

HUSBAND AND WIFE.

Divorce—Death of Husband before Final Decree—Alimony—Abatement.—Where pending a suit by the wife for a divorce *a mensa et thoro*, the husband dies before a final decree, the court cannot, after the death of the husband, require his executor to become a party to the suit, to answer the demand of the wife for an additional allowance for counsel fees for services rendered in the cause during the lifetime of the husband, nor pass an order requiring such executor to pay the same: *McCurley* v. *McCurley*, 60 Md.

A wife has the right, independently of the actual merits of the case, to require her husband, when she is living apart from him, and without means of her own, to defray the expenses of prosecuting her suit for a

divorce, the court exercising its sound discretion as to when and to what extent such allowance shall be granted: *Id.*

A divorce suit being a personal action, the death of either party before decree abates the divorce proceedings; and this effect extends to whatever is identified with those proceedings: *Id.*

INJUNCTION. See *Taxes.*

INTEREST. See *Legacy.*

LANDLORD AND TENANT.

Duty to repair—Liability to Tenant for absence of Railing to Steps.—A landlord who lets tenements in a building to different tenants, with a right of way in common over a flight of stone steps, without a railing, leading from the street to the yard of the building, is not liable to a tenant injured by falling upon ice accumulated upon the steps, if it is not the landlord's duty to keep the steps clear of ice, although the steps are constructed of such material and in such a way as to occasion the accumulation of ice thereon, there being no change in the construction of the steps since the tenancy began: *Woods* v. *Naumkeag Steam Cotton Co.*, 134 Mass.

LEGACY.

Interest on—Computation.—The will contained this clause: "I give and bequeath to my daughter, ————, $1000, to be paid on her marriage or when she arrives at age, with interest after, at her option." The will was executed in 1848; the legatee attained her majority in 1849, and was married in 1853; the testator died in 1854. *Held*, that the legacy drew interest as soon as the daughter arrived at age: *Trustees of Bradford Academy* v. *Grover*, 55 Vt.

The legacy bears simple interest; and the payments should be applied when made, first to extinguish the interest, and then the principal sum: *Id.*

LIBEL.

What constitutes—Question of Malice for the Court.—In every free country a citizen has the right, within lawful and proper limits, to discuss and censure, boldly and fearlessly, the official conduct of a public man; but there is a broad distinction between fair and legitimate discussion of the conduct of a public man, and the imputation of corrupt motives by which that conduct may be supposed to be governed. And if one goes out of his way to asperse the personal character of a public man, and to ascribe to him base and corrupt motives, he must do so at his peril, and must either prove the truth of what he says, or answer in damages to the party injured: *Negley* v. *Farrow*, 60 Md.

The fact that one is the proprietor of a newspaper, entitles him to no privilege in this respect not possessed by the community in general. The law recognises no duty imposed on him, arising from his relations to the public, to defame and libel the character of any one; and if he does, it is no answer to say he did it in good faith and without malice, honestly believing it to be true: *Id.*

Malice, but not malice in the ordinary sense of hatred, or ill will against the person of whom the defamatory words are spoken, is an essential element in an action for libel; but if the publication be in itself libellous, the law in such cases implies malice: *Id.*

In an action of libel against the editors of a newspaper, based on the

publication by them of an article criticising the conduct of the plaintiff as a public officer, it was *Held*, 1. That if the article were *per se libellous*, and its publication established, the only question before the jury on the general issue plea of not guilty, was the amount of damage which under all the circumstances the plaintiff was entitled to recover. 2. That in estimating the damages the jury were to consider whether the article was published maliciously and wantonly, for the purpose of injuring the character and reputation of the plaintiff; or as editors of a newspaper honestly commenting upon the official acts and conduct of the plaintiff, and in the belief of its truth. 3. That the statute of 32 Geo. III., ch. 60, "Fox's Libel Act," was not in force in Maryland, and here the court had always decided whether the publication was in law a libel, leaving the jury to find the fact of publication, and such other facts as might be pertinent to the issue: *Id.*

LIMITATION, STATUTE OF. See *Gift; Trustee.*

Addition of new Count to Declaration—Amendment.—A new cause of action, distinct from that already mentioned in the declaration, cannot escape the effect of the Statute of Limitations, after the time for suing upon it has elapsed, by being introduced by way of amendment or additional counts into the declaration, in an action for a different cause of action, brought before the lapse of the statutory time: *North Chicago Rolling Mill Co.* v. *Monka*, 107 Ill.

But when the amendment in an additional count is introduced merely to restate, in a different form, the same cause of action mentioned in the declaration as originally drawn, and not to present a new and different cause of action, the rule has no application, and the plea of the Statute of Limitations to such new count is not proper: *Id.*

MASTER AND SERVANT.

Fellow-Servant—Laborer and Superintendent—Negligence.—A person employed by a city to superintend the digging of a trench, and a person employed as a laborer to dig the trench, by the same master, are *prima facie* fellow servants: and to maintain an action against the city for personal injuries occasioned to the laborer by the negligence of the superintendent, the declaration must allege facts, the legal effect of which is that they are not such fellow-servants: *Flynn* v. *City of Salem*, 134 Mass.

MUNICIPAL CORPORATION.

Negligence of Officer—Liability for.—Cities are not liable for the negligent acts of the officers or men employed in their fire departments while in the discharge of their duty, thus creating an exception in this class of cases to the general rule of *respondeat superior: Wilcox* v. *The City of Chicago*, 107 Ill.

This exemption from liability is placed upon the ground that the service is performed by the corporation in obedience to an act of the legislature, and is one in which the corporation has no particular interest, and from which it claims no special benefit in its corporate capacity, and because the members of the fire department, although appointed and paid by the city, are not the agents and servants of the city for whose conduct it is liable, but act rather as officers of the city charged with a public service, and because sound public policy forbids any liability in such a case: *Id.*

Negligence—Defective Sidewalk.—A city had notice of a hole in a sidewalk near a railroad crossing, and neglected to repair the same within a reasonable time. A person in passing over such walk, exercising due care, stepped into the hole, whereby he was unavoidably thrown upon the railway track before an approaching train of cars, and in attempting to get up his clothes caught upon a spike or nail in the sidewalk, and he was struck by the train before he was able to extricate himself, and killed: *Held*, the city was liable in damages, under the statute, to the personal representatives of the deceased, for causing his death: *City of Chicago* v. *Schmidt*, 107 Ill.

NEGLIGENCE. See *Master and Servant; Municipal Corporation.*

NOTICE.

Record—Purchaser.—A purchaser is not chargeable with constructive notice of all instruments and incumbrances of record, but only of such as lie in the apparent chain of title, or may have been made by one in some way connected with the property involved in interest, and that brought home to the notice of the purchaser: *Grundies* v. *Reid*, 107 Ill.

PARTNERSHIP. See *Arbitration.*

Presumption as to its Existence.—Where parties agree to share in the profits of a business, the law will infer a partnership between them in the business to which the agreement relates. This presumption will control until rebutted by proof to the contrary: *Lockwood* v. *Doane*, 107 Ill.

Use of Time in improving Firm Machines—Right to Letters Patent for Improvement.—If a member of a copartnership, the articles of which provide that each partner is to give his time to the business of the firm, and is not to engage in any other speculation or business in his own name and on his own account to the detriment of the firm, uses his time, and labor and materials belonging to the firm, in making improvements in machines manufactured and sold by the firm, with the knowledge and without the objection of the other partners, they can claim no interest in letters patent procured by him, at his expense and in his name, for such improvements: *Belcher* v. *Whittemore*, 134 Mass.

PLEADING. See *Limitations, Statute of.*

Joinder of Counts.—A count in tort for deceit in the sale of stock may be joined with a count in contract to recover back the price paid: *Teague* v. *Irwin*, 134 Mass.

RAILROAD.

Fraudulent Issue by Clerk of refunding Certificates—Liability of Company to Innocent Holder.—A clerk in a railroad was entrusted with refunding certificates in blank to be filled up and delivered to holders of coupons. He fraudulently filled up some of the certificates and disposed of them: *Held*, 1. That it was within his employment, and scope of his duties, to act officially as the agent of the railroad company, in receiving coupons, and filling up and supplying certificates to the owners or depositors of such coupons. 2. That when he issued such certificate and delivered it to a third party, who acted without knowledge and in good faith, paying value for it, such party had a right to act upon the

presumption that the representations of such certificate were truthful, and not false and fraudulent. 3. That having confided to him the special trust of executing that business, the agent was held out to the public as competent, faithful and worthy of confidence; and though he deceived both his principal and the public, by forging and issuing the false certificates, it was but reasonable that the principal who placed him in the position to perpetrate the wrong should bear the loss. 4. That the facts that the certificates happened to be in the hands of a party who was an agent of the company, or that they happened to represent on their face that the coupons had been deposited by such person, were not sufficient of themselves to discredit the certificates, or to require of innocent third parties to act upon the presumption that they were false and fraudulent: *Western Maryland Railroad Co.* v. *Bank*, 60 Md.

Removal of Causes.

Appeal from Order allowing Removal—Variation in Form of Bond.—An appeal lies from an order of the Superior Court, granting a petition for the removal of an action to the Circuit Court of the United States: *Ellis* v. *Atlantic & Pacific R. R. Co.*, 134 Mass.

Section 689 of the U. S. Rev. Stats., provides that, upon certain conditions, an action commenced in a state court may be removed to the Circuit Court of the United States for the district where the action is pending, "next to be held after the filing of the petition for such removal, and that "in order to such removal, the petitioner must, at the time of filing his petition therefor, offer in said state court good and sufficient surety for his entering in such Circuit Court, on the first day of its session, copies of said process against him." The bond filed with a petition for the removal of an action contained the condition that the petitioner "shall enter in such Circuit Court, on the first day of its session next after the granting of said petition, a copy of the record." The next session of the Circuit Court for the district, held after the granting of the petition, was the session next held after the filing of the petition; *Held*, that the variation in the form of the bond from the words of the statute was immaterial: *Id.*

Replevin. See *Attachment.*

Stoppage in Transitu. See *Common Carrier.*

Taxes.

Equity—Injunction against Collection.—It is the doctrine of this court that *equity will not* enjoin the collection of taxes that are levied on property subject to taxation, and which are due and unpaid, if the same are legally imposed. A court of equity will never enjoin the collection of taxes unless they are void, or levied without authority on the part of the officers executing the revenue laws: *Moore* v. *Wayman*, 107 Ill.

As long as such officers are acting under the law in imposing and collecting taxes, the courts will not interfere. They will do so only when such officers transcend their powers and act without legal warrant. Nor will they interfere for the reason that the assessment is not strictly according to the letter of the law; and when there is no ground for enjoining the collection of a tax, the collector cannot be enjoined from

making a tax deed to the holder of the certificate of purchase, unless good cause is shown for matters which have transpired since the sale: *Id.*

TRUST.

Trustee—Authority to Sell—Mortgage—Confirmation by Cestuis que Trust.—A will creating a trust contained the following clause: "My said trustee shall have power to invest, and change the investment of said moiety, and for that purpose to sell, convey and dispose thereof, or any part thereof, as often as he may think proper." *Held*, 1. That this power did not authorize the trustee to mortgage the property, to secure the repayment of a loan. 2. That it was competent for the *cestuis que trust*, on arriving at age to confirm and make valid a mortgage executed by the trustee, to secure a loan, but to make such confirmatory mortgage binding on them, it must appear that they acted advisedly, with their eyes open, with information in regard to every material circumstance surrounding the transaction, with knowledge that the mortgage by the trustee was not made in pursuance of the power conferred by the will, and was not therefore binding on them, and that the money borrowed was expended by him for his own personal use, and not for the benefit of the trust estate: *Wilson* v. *The Maryland Life Ins. Co.*, 60 Md.

Debt due Cestui que Trust—Statute of Limitations—Application of Balances due Trustee.—The orator was trustee under a deed of trust, acting from 1865 to 1880. He boarded his ward, who was *non compos mentis*, acted as his guardian, though not legally appointed, and owed him a note of $800, given in 1864, which was not a part of the trust property. The trust property consisted of real estate, which on the death of the beneficiary, if he left no children, was to be divided between the heirs of the grantor, the trustee being one of them. The beneficiary having deceased, in settlement of the administration in a court of chancery between the trustee and the other heirs, *Held*, 1. The trustee cannot plead the Statute of Limitations as a bar to the note he owed his ward. 2. Nothing more than the income of the trust property could be appropriated to the support of the ward until his other property was used up. 3. The annual balance of the trustee's appropriations in behalf of his ward above the income of the trust property the law will apply on said note: *Chamberlin* v. *Estey*, 55 Vt.

WAGES. See *Attachment.*

WILL.

Trust—Precatory Words—Near Relatives.—Words of request, desire, expectation and the like in a will, are creative of trusts, when the contrary does not appear from the context or by necessary implication: *Handley* v. *Wrightson*, 60 Md.

Precatory words in a will are sufficient to create a trust where the testator has pointed out with clearness and certainty the objects of the trust and the subject-matter on which it is to attach, or from which it is to arise and be administered: *Id.*

A testator devised all his lands to his son, and in the event of his son's death "leaving no child of the lawful issue of his body at the time of his death," declared it to be his will and desire that his wife, S. W., should have his said lands or real estate so devised to his said son, "with a special request that at her death she give the said lands to

be equally divided between her near relatives and mine." The son having died without issue, and the wife of the testator having subsequently died without making disposition of the property by deed or will, it was *Held*, 1. That by the terms of the devise to his wife a trust was created in the testator's lands for the benefit of the near relatives of his wife and himself. 2. That no legal uncertainty attached to the term "near relatives" as used by the testator, they being those who would take under the Statute of Distributions. 3. That the heirs-at-law or next of kin of the testator were entitled to one undivided half of the land devised, and the heirs-at-law or next of kin of the testator's widow were entitled to the other undivided half: *Id.*

Devise construed as passing Life Estate, and not falling within Rule in Shelley's Case.—A testator devised to his granddaughter "the free use and occupation of" certain land, "to have and to hold, to use, occupy and enjoy the same, together with all the rents, issues and profits thereof, with the appurtenances, during her natural life." In giving other bequests, the will provided: "It is my will, and this bequest is made upon the express declaration, that in case any of the said grandchildren should depart this life without issue of their body, that then all their share of said real estate (or to whom the use thereof is bequeathed as aforesaid) shall be equally divided among all my grandchildren and their legal representatives, and the title thereto thereafterwards so vest forever. It is my will that no title in fee to any of said land shall vest in my said grandchildren, and I declare it to be my will that they shall only have a life estate therein, and that the fee simple shall vest in their legal heirs. And it is my will that they, nor any of them, shall have any right to sell, dispose of, mortgage or incumber, in any manner, any of said land, and that they shall keep it free and clear for their legal heirs, to whom it shall descend forever:" *Held*, that the granddaughter just named took only a life estate, and that the devise to her did not come within the rule in Shelley's case: *Belslay* v. *Engel*, 107 Ill.

The rule in Shelley's case is, at most, a technical rule of construction, and must give way to the clear intention of the testator or donor, when that intention can be ascertained from the instrument in which the words supposed to be words of limitation are used: *Id.*

LIST OF THE PRINCIPAL NEW LAW BOOKS.

HEARD.—Shakespeare as a Lawyer. By F. F. HEARD. 12mo., pp. 119. Boston: Little, Brown & Co.

IVATTS.—Carriers' Law, relating to Goods and Passenger Traffic on Railways, Canals and Steamships, with Cases. By E. B. IVATTS. London: M'Corquodale & Co.

JONES.—A Treatise on the Law of Pledges, including Collateral Securities. By L. A. JONES. 8vo., pp. 601. Boston: Houghton, Mifflin & Co.

WALKER.—Text-Book of the Patent Laws of the United States of America. By A. H. WALKER. 8vo., pp. 723. New York: L. K. Strouse & Co.

WARVELLE.—A Practical Treatise on Abstracts and Examinations of Title to Real Property. By G. W. WARVELLE. 8vo., pp. 632. Chicago: Callaghan & Co.